IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6523 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL TEXTILES

Versus

LIMDI MUNICIPALITY

Appearance:

MR SURESH M SHAH for Petitioner

MR PM RAVAL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/03/2000

ORAL JUDGEMENT

Learned advocate Mr. S.M.Shah and Mr. M.S.Shah appears for the petitioner. Learned advocate Mr.P.M.Raval appearing for the respondent Municipality is not present. This petition was taken up for final

hearing on 18.2.2000. On that occasion, learned advocate Mr. Raval has not remained present and the matter was, therefore adjourned to 25.2.2000 on which day also, Mr. Raval has not remained present and, therefore, in the interest of justice, the matter was adjourned to today i.e. 3.3.2000. Today also, when the matter was taken up for final hearing, Mr. Raval has not remained present.

I have heard Mr. Mehul S.Shah,learned advocate for the petitioner.

The question involved in this petition for this COurt's consideration is as to whether it is legally open to the respondent or its agents, servants or subordinates to recover octroi from the petitioner which is a new industry, entitled to tax exemption which is popularly known as tax holidays,despite the exemption provisions contained in sec.99 of the Gujarat Municipalities Act and a Notification issued thereunder?

The facts of the present petition, in short,are that the petitioner is a firm for starting a new industry of textile, formed the partnership firm and applied for allotment of land from the Gujarat Industrial Development Corporation who has its estate being developed at Limdi and on its application, it has been granted plot no. 108 for erecting its new industry thereon which is the textile industry. Section 99 of the Gujarat Municipalities Act permits octroi to be levied by the Municipality subject to the general or special orders issued by the State Government in this behalf and the State Government has, in exercise of its powers, issued the order on 7th Sept.1965 which has been amended from time to time providing for exemption against the recovery of the octroi for the period specified therein which is seven years from the date of erection of the factory for new industry or five years from the date on which production of goods has commenced in the new industry whichever is less, on the building, materials, plants, machineries, stores, spare parts, raw materials, semi finished goods or any other goods brought within the octroi limits of the municipality specified therein in Schedule B which includes the limdi Municipalaity, the respondent herein not for sale but for use in the manufacture of any goods or in erecting any factory by new industry. The petitioner has been handed over the possession of the same and possession receipt for the purpose has been executed and thereafter, the petitioner has obtained permission for its construction from the respondent on 18.1.1988 and the petitioner has also been granted licence for small scale industries for its new

industry. On 28.12.1987, the petitioner applied before the respondent requesting to it that the petitioner is entitled to the benefit of exemption pursuant to the order dated 7.9.1965 (Annexure "A" to the petition) by writing a letter of request only but the respondent replied the letter by letter dated 9.3.88 that though it has received the application dated 28.12.1987, the petitioner has to fill in a form which is prescribed by it and for want of the said form duly prescribed by it, the said application of the petitioner has been filed and the petitioner may apply in the prescribed form. In view of the above, the petitioner applied for exemption benefit in prescribed form alongwith its fresh application dated 10.3.1988 which is at annexure "C" to the petition . It is the grievance of the petitioner that the respondent has not decided the said application till this date and on the contrary, the respondent has started to recover octroi on 21st September, 1988 amounting to Rs.13,336.05 ps. from the petitioner on the building materials and machinery and electrical fittings brought in by the petitioner in its new industry at GIDC Plot No. 108 and the respondent Municipality has refused to consider the petitioner's right to exemption as a matter of course by virtue of the provisions of law read with notification at annexure "A" to the petition and, therefore, the petitioner has approached this court by filing the aforesaid petition.

This Court, while admitting this petition by issuing rule thereon, has granted the ad interim relief in terms of paragraph 14(F) on a condition that the petitioner should file with the Nagarpalika a complete list of material imported within the municipal limits during the currency of the interim relief regularly every month and also mentions in the said chart assessable value o f the commercial goods if the octroi duty would have been leviable thereon. For the purpose of interim relief, notice was issued and was made returnable on 25.10.88.Said ad interim relief granted on 12.10.88 has continued till this date. According to the petitioner, construction of the new industry has been started on 18th January, 1988 and the petition has been filed on 26th September,1988 and the ad interim order was passed on 12.10.1988 by this court. During this period, the respondent municipality has recovered octroi from the petitioner to the tune of Rs. 13,336.05 ps. Thereafter, due to the ad interim order passed by this court, no octroi has been recovered from the petitioner.

According to the petitioner, under notification

dated 7th September, 1965, the petitioner is entitled to exemption from the payment of octroi and, therefore, whatever octroi has been recovered by the respondent municipality is required to be refunded to the petitioner. In this petition, the respondent Municipality has not filed any reply. The respondent Municipality has also not taken any decision on the application dated 10th March, 1988 made by the petitioner seeking exemption on the basis of the notification dated 7th September, 1965. Therefore, without going into the merits of the matter, since the respondent Municipality has not taken any decision on the application of the petitioner, it would be just and proper to direct the respondent Municipality to decide the said application and pass speaking order on the said application after hearing the petitioner.

Therefore, on the facts and in the circumstances of the case, the respondent Municipality is directed to consider and decide the application submitted by the petitioner on 10th March, 1988 page 18, annexure "C" to the petition for exemption frm octroi levy under notification dated 7th SHeptember, 1965 annexure "A" page 13 of the petition as expeditiously as possible, preferably within two monthsfrom the date of receiptof writ of this order. The respondent municipality is also directed to consider and decide as to whether the petitioner will be entitled to the refund of the amount of Rs. 13,336.05 which it has recovered from the petitioner towards octroi during the aforesaid period during the pendency of the said application dated 10th March, 1988. The respondent Municipality shall refund the said amount of Rs. 13,336.05 if it ultimately comes to the conclusion that the petitioner is entitled to octroi exemption and shall refund the said amount to the petitioner. The respondent municipality shall pass reasoned and speaking order on the application after hearing the petitioner.

The petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

3.3.2000. (H.K.Rathod,J.)

Vyas